

Misdemeanor/Infraction Rules Advisory Committee
Minutes from Meeting of August 29, 2008

Present: Judge Mike Oths, Vice-Chair, Rebecca Cude, Suzanne Thompson, Benjamin Harmer from the Ada County Prosecutor's Office, Kevin Rogers from the Ada County Public Defender's Office, and Cathy Derden.

The Committee approved the minutes of the last meeting of June, 2006.

Bond Schedule.

Vehicle Permit Offenses. There was a request from Alan Frew at the Idaho Transportation Department to consider raising the bond for violations of I.C. § 49-432. The department recommends that the bail schedule for violations of § 49-432 be set no lower than \$300.00 for single vehicle, \$400.00 for combination of vehicles, and \$500.00 for temporary weight increase permits. This request was based on the fact that, during the past legislative session, S1460 was signed into law which doubled the fees for all temporary permits in lieu of registration and temporary fuel permits. These changes were effective July 1, 2008. The purpose of raising the bond would be to deter violations by making the bond significantly higher than the cost of the permit.

Currently the bond schedule is \$103 for a single vehicle and \$153 for a combination of vehicles. The new legislation raised the cost for a single permit to \$60 and the cost of a permit for a combination of vehicles to \$120, so the bond is already higher than the cost. However, since the cost of the permit doubled the Committee voted to recommend doubling the bonds so that the bond for operating a vehicle without a permit would be raised to \$200 for a single vehicle and \$300 for a combination of vehicles.

The Committee had some question as to the bond for a operating a vehicle without a temporary weight increase permit, which is currently not on the bond schedule. This appears to be a reference to I.C. § 49-432(2), which sets a permit fee of \$50 for a 120 hour permit and fees ranging from \$225 to \$350 for a thirty day permit. The IDOT requested a bond be set in the amount of \$500, and the Committee requested more information on this request, which will be circulated.

The IDOT, with the agreement of the Idaho State Tax Commission, also requested that bail for a violation of I.C. § 63-2441, special fuel permits, be raised from \$124 to \$300 as the permit now ranges from \$60 to \$208. The Committee voted to recommend raising this bond to \$300.

Driving Without Privileges. The Committee also did a general review of the bond schedule and there was a recommendation that the bond for Driving Without Privileges be broken into a second offense and third offense much like Driving Under the Influence with a higher bond for the second and third offenses. Each offense of DWP does carry a higher minimum penalty and it was noted that that this is an intentional offense by the second offense as the person knows he or she is not to be driving. Currently the bond for

DWP is \$500 for an Idaho resident and \$1,000 for a non-resident. The Committee recommended adding to the schedule:

Driving without Privileges (second offense)

Resident \$1,000

Non-resident \$3,000

Driving without Privileges (third offense)

Resident \$2,000

Non-resident \$4,000

Insurance Offenses. A suggestion was made that court costs be added to both misdemeanor and infraction violations for no insurance to go to a victim's compensation fund for those injured by drivers with no insurance. Recognizing this would be a legislative decision, it was suggested that the IPAA might be the best organization to pursue this legislation and the prosecutors on the Committee will forward this suggestion to that organization.

Condition of probation on DUI offenses. The City Attorney's Office sent a proposal to amend I.C.M.R. 13 by adding a new subsection (e) as follows:

"(e) Automatic Condition of Release Upon DUI Arrest. A person arrested for DUI pursuant to Idaho Code 18-8004, 18-8005(4), 18-8004C or 18-8004(1)(d) shall, as a condition of bail pursuant to I.C.R. 46(d), be required not to operate a motor vehicle while having any amount of alcohol in his/her person."

The purpose of the proposed amendment is to address the situation where an individual is charged with a new DUI while still on bond for a previous pending DUI. This scenario recurs with some frequency and constitutes a serious threat to public safety. Because misdemeanor DUIs have a set bond amount, it is possible for a defendant to have multiple DUI arrests, but the bond amount would always be as low as \$500 and there would be no conditions of release. Because there are no conditions of release, the arrest on the second DUI is not a violation of bond on the first DUI. In Ada County there is a typical delay of 2 or 3 months between the date of an alleged offense and a pre-trial conference.

The amendment to I.C.M.R. 13 would allow the state to attempt to have a defendant's bond increased or conditions of release imposed under I.C.R. 46(e)(2), which provides: "Upon a verified application of the prosecuting attorney that a person has willfully violated conditions of the person's release on bail ... the court may issue a warrant directing that the person be arrested and brought before the court for hearing ..." Prosecutors could use the probable cause affidavit from the new DUI arrest to inform the court about an alleged violation of a condition of release.

The Committee was of the consensus that no further DUIs should be a condition of release on bond but was concerned about the language "while having any amount of

alcohol in his/her person.” The amendment is aimed at persons who are charged with a second DUI and there was concern the proposed language was too broad.

The Committee then considered the following language, "(e) Automatic Condition of Release Upon DUI Arrest. A person arrested for DUI pursuant to Idaho Code 18-8004, 18-8005(4), 18-8004C or 18-8004(1)(d) shall, as a condition of bail pursuant to I.C.R. 46(d), not operate a motor vehicle having consumed any alcohol or illegal drug or while under the influence of any intoxicating substance.”

The Committee voted in favor of this proposal but, recognizing how small the Committee was, decided more input was needed. Benjamin Harmer and Rebecca Cude will send it to the IPAA for comments and suggestions at its meeting in February. It will also be circulated to public defenders and Judge Oths will ask the magistrates for comment.

Misdemeanors to Infractions. The Committee again recommended changing tobacco offenses for minors so that a first offense is an infraction as well as first offense minor in possession of alcohol. The purpose would be to avoid the stigma of a misdemeanor conviction. However, again it was realized this would need support of Juvenile Judges and IPAA.

Expungement. With the exception of one member, the Committee was of a consensus that there should be some way to get certain offenses off a person’s criminal record. Judge Oths noted that while some persons get a withheld judgment, probation and ultimate dismissal, other persons may have had a less serious offense but because they entered a plea with a fine they have no way to get the offense later dismissed. The Committee wanted to go on record as being in favor of a legislative mechanism that would allow persons to ask to have offenses expunged after the passage of a certain amount of time and to explore how the information is deleted from records or noted on records and data bases. As it did in 2006, the Committee again recommends the Supreme Court appoint a committee to look at I.C. § 19-2604 and the possibility of expungement of a conviction and what that means.

Personal Information. Access to personal information remains a concern and each rules committee has been asked to make suggestions on any amendments that could help protect personal information. Citations commonly have the address, date of birth and social security number of the defendant and the uniform citation provides for a driver’s license number or a social security number. Even the form for the trial date notice contained in Infraction rule 6, asks for driver’s license or social security number.

It was proposed that at any place where SS# is required that only the last four digits be used and that there be a separate rule stating this as opposed to a change on all the forms.

The new rule would read, “Social Security Numbers. If an individual’s social security number is included in a document filed with the court, only the last four digits of that number should be used.”

The word “should” was chosen over “shall” so that if the entire number was given there would be no liability or basis for any claim. It was suggested the new rule be added at the end of the misdemeanor rules and be Rule 16 and current Rules 16 and 17, on reporting of proceedings and appeal to the district court, would be renumbered 17 and 18.

Infraction Fines.

Speeding in a school zone.

SB 1361aa adds a new section, I.C. 49-658 entitled “School Zone Speed Limit” that provides for a *minimum* penalty of not less than seventy-five dollars. With this legislation, the fine being charged now is \$75 plus court costs. However, commonly used violations are usually added to the infraction schedule and the Committee voted to recommend setting a fixed penalty of \$100 and to add it to the published schedule. With court costs of \$41.50, the total for the violation would be \$141.50. The addition will require renumbering of the penalties as the speeding violations are grouped together near the beginning of the schedule.

(6) Speeding in a construction zone. I.C. § 49-657 (Fixed penalty \$50.00, court costs \$16.50, county justice fee \$5.00, peace officers training fee \$10.00, and ISTARS technology fund fee \$10.00). \$91.50

(7) Speeding in a school zone. I.C. 49-658. (Fixed penalty \$100.00, court costs \$16.50, county justice fund fee \$5.00, peace officers training fee \$10.00, and ISTARS technology fund fee \$10.00). \$141.50

(7 8) Permitting unauthorized child under age 18 to operate vehicle. Section 49-333(1), Idaho Code. (Fixed penalty \$54.50, court costs \$16.50, county justice fund fee \$5.00, peace officers training fee \$10.00, and ISTARS technology fund fee \$10.00). \$96.00

The court may want to consider adding this to the infraction penalty schedule before July of 2009.

Gender Neutral Rules. A list has been compiled by Steve Caylor of rules that need to be updated to be gender neutral and the Committee supports this effort. Judge Oths will provide these amendments.

ADDENDUM TO MINUTES

At the meeting the Committee wanted more information as to the request from IDOT for a \$500 bond for operating a vehicle without a temporary weight increase permit. This offense is referenced in I.C. § 49-432(2) and is currently not on the bond schedule.

I.C. § 49-432(2) reads:

“(2) Permits to operate a vehicle or combination of vehicles in excess of the registered maximum gross vehicle weight up to a maximum of one hundred twenty-nine thousand (129,000) pounds gross vehicle weight shall be:

(a) One hundred twenty (120) hour permit to increase gross weight
.....\$50.00

(b) Thirty (30) day permit to increase gross vehicle weight:

| Maximum Registered Gross Weight of Vehicle (Pounds) | Temporary Permitted Maximum Gross Weight (Pounds) | | | | | |
|---|---|--------|--------|---------|---------|---------|
| | 80,000 | 86,000 | 96,000 | 106,000 | 116,000 | 129,000 |
| 50,001-60,000 | \$225 | \$250 | \$275 | \$300 | \$325 | \$350 |

The permit issued pursuant to this subsection (2) shall be specific to the motor vehicle to which it is issued. No permit or fee shall be transferable or apportionable to any other vehicle, nor shall any such fee be refundable. At the time of purchasing a permit, the applicant may purchase additional permits in any combination which does not exceed a maximum of ninety (90) days.”

This section of the statute sets a permit fee of \$50 for a 120 hour permit and fees ranging from \$225 to \$350 for a thirty day permit. The IDOT requested a bond be set in the amount of \$500, based on the highest amount of a permit and based on the intent to make the bond a high enough deterrent that persons will opt to pay the permit fee. The problem with this section is the wide range in the costs of different permits since it can be as low as \$50 and go up to \$350.

The Committee then voted by email and voted “no” on a general \$500 bond.

It was suggested a bond be set at \$250 for a violation of subsection (a) and \$500 for a violation of subsection (b) and a majority voted in favor of this recommendation.